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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/936,291 | 01/08/2002 | Christian John Cook | P67120US0 | 2439 |

136 7590 09/04/2002

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WASHINGTON, DC 20004

EXAMINER

DEWITTY, ROBERT M

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1616

DATE MAILED: 09/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,291

Applicant(s)

COOK, CHRISTIAN JOHN

Examiner

Robert M DeWitty

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-59, 61, 64, 65, 67-84 and 93 is/are pending in the application.
- 4a) Of the above claim(s) 81-84 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59 is/are allowed.
- 6) ☒ Claim(s) 52-58, 61, 64, 67-80, and 93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 52-59, 61, 64, 65, 67-84 and 93 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 52-59, 61, 64, 65, 67-84, and 93 are pending in the instant application. Claims 60, 62, 63, 65, 66, and 85-92 have been cancelled. Acknowledgement is made of applicant's election of invention submitted 4/26/02.

Election/Restrictions

1. Claims 81-84 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10. Applicant asserts that it would not be undue burden to search and consider the claims of 81-84 with the elected invention 52-59, 61, 64, and 93. This assertion is incorrect because there are several methods of using the invention in claim 52, including production gain in animals and enhancing efficacy of amino acid. The search for the composition in claim 52 would not necessarily include the methods of using the composition, and thus would require further searching.

Acknowledgement is made of applicant's election of species including leucine, metyrapone, and mifepristone.

Allowable Subject Matter

2. Claim 59 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 52, 61, 64, 67-80, 93 are rejected under 35 U.S.C. 102(b) as being anticipated by Masuyama et al. (U.S. Pat. No. 6,410,685).

Masuyama et al. relates to a method for reducing stress comprising an anti-stress agent. The anti-stress agent can comprise as the anti-stress agent a tripeptide Val-Pro-Pro (abstract). Masuyama teaches the anti-stress agent may be used in an amount from 0.001 to 0.1 wt% (col. 4, line 29-35).

4. Claim 52-58 are rejected under Riniker et al. (U.S. Pat. No. 3,755,286).

Riniker teaches the compositions selected from corticotropins and amino acids such as L-leucine and L-valine for ACTH-activity. It is taught these peptides have a stronger and/or longer lasting ACTH-activity than corresponding peptides that contain the natural first three amino acids (col. 1 and abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

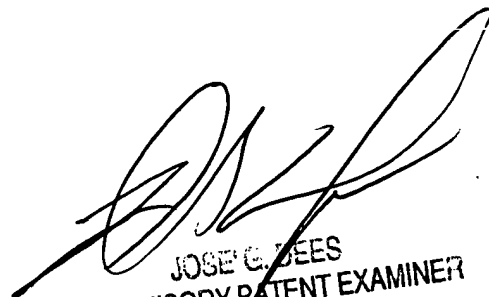
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
August 26, 2002


JOSE C. DEES
SUPERVISORY PATENT EXAMINER
1616